

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: HARRY SAWYER) OEIG Case #18-00921

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received this report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Executive Inspector General for the Governor, and to Harry Sawyer at his last known address.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

I. SUMMARY OF THE ALLEGATIONS

On May 2, 2018, the Office of Executive Inspector General (OEIG) received a complaint alleging that Harry Sawyer, then the Assistant Director of the Illinois Department of Veterans’ Affairs (IDVA), engaged in sexual harassment by making inappropriate, sexually-oriented comments, and used a racial slur on at least two occasions. The complaint indicated that the allegations were initially investigated by IDVA’s Equal Employment Opportunity Officer, Greg Dooley, who substantiated the allegations. The OEIG subsequently opened this investigation to see whether Mr. Sawyer’s alleged conduct may have also violated the Illinois State Officials and Employees Ethics Act (Ethics Act), and to see if there were other instances of this type of conduct.

II. BACKGROUND

IDVA is an approximately 1,200-person agency charged with providing housing, educational, employment, and other benefits to Illinois military veterans. To meet these objectives,

the agency operates four residential facilities and more than 70 service offices throughout the state. IDVA also maintains central offices in Chicago and Springfield.

The agency's primary officers – the Director and the Assistant Director – are appointed by the Governor and confirmed by the Illinois Senate; both are based in the Chicago office. At all times relevant to this investigation, Erica Jeffries served as the Director, and Mr. Sawyer served as the Assistant Director. While Ms. Jeffries came from a private-sector position prior to working for IDVA, Mr. Sawyer held various positions at the agency over a 30-plus year career.

III. INVESTIGATION

In this investigation, the OEIG requested and reviewed Mr. Sawyer's personnel and disciplinary files, as well as his calendar and email records for the time period of November 16, 2017 through June 6, 2018. OEIG investigators also reviewed Mr. Dooley's report, as well as the written statements from IDVA employees that he gathered during his internal investigation. The OEIG also interviewed the witnesses from Mr. Dooley's investigation, as well as others.

A. IDVA's Internal Investigation

Mr. Dooley told OEIG investigators that, at some point in April 2018, he overheard IDVA employees discussing sexually inappropriate comments made by Mr. Sawyer.¹ He told IDVA Chief of Staff Renysha Brown about what he heard, and she instructed him to conduct an internal investigation, even though the employees in question were reluctant to file formal complaints. Soon thereafter, he also received a call from Ms. Jeffries, who told him to gather witness statements.

Mr. Dooley said that over the next several weeks, he interviewed seven IDVA employees – Ms. Brown, [names and titles of IDVA Employees 1-6 redacted] – and obtained written statements from all but [Employee 6]. Mr. Dooley told the OEIG that he wanted to speak with [Employee 7] [identifying information redacted], but that she declined to be interviewed. Moreover, Mr. Dooley said that due to time constraints, he was unable to speak with two other IDVA employees – [names and titles of IDVA Employees 8 and 9 redacted] – although his investigation revealed that they might have witnessed some of Mr. Sawyer's alleged conduct. He also said he did not speak with Mr. Sawyer, nor did he obtain or review Mr. Sawyer's emails, travel records, or other related documentation.

Mr. Dooley said he completed his summary report (including the above-referenced witness statements as exhibits) on May 2, 2018, and submitted it to Ms. Jeffries shortly thereafter. Taken together, the report and the exhibits discussed four inappropriate, sexually-oriented comments made by Mr. Sawyer, and at least one incident in which Mr. Sawyer used a racial slur. Mr. Dooley found that there was sufficient evidence to conclude that the alleged incidents in fact occurred, and that they rose "to the level of sexual harassment and discrimination." Mr. Dooley said that Ms. Jeffries met with Mr. Sawyer to discuss the report approximately a week later. A few days after that meeting, Mr. Sawyer submitted his resignation letter, with an effective date of May 31, 2018.

¹ OEIG investigators conducted an in-person interview with Mr. Dooley on July 17, 2018 in Springfield, Illinois.

B. Allegations Of Sexual Harassment

OEIG investigators interviewed each of the possible witnesses identified above and asked them about each of the four inappropriate, sexually-oriented comments disclosed in Mr. Dooley's report.² As discussed in more detail below on a statement-by-statement basis, in their OEIG interviews and/or written statements to Mr. Dooley, various witnesses confirmed that these comments were made. In addition, OEIG investigators also asked almost all of the witnesses if they could recall hearing any *additional* inappropriate comments from Mr. Sawyer, and all of them answered in the negative.

1. The "Lunch" Comment

Two witnesses – [Employee 4] and [Employee 3], both of whom were based in Springfield – recalled an incident between Mr. Sawyer and [Employee 4] that occurred in IDVA's Springfield office on March 14, 2018. [Employee 4] told OEIG investigators that Mr. Sawyer was visiting Springfield for a meeting of the Illinois Veterans Advisory Council (IVAC). She recalled that she was having trouble with her shoe strap, and bent down to fix it. She told OEIG investigators that attendees were walking back from the IVAC meeting at that time, and that they were talking about lunch. According to [Employee 4], when they stopped, Mr. Sawyer said, in substance and in reference to her, "Oh, that's lunch," and that "it was eye candy." [Employee 4] stated that she felt the comments were inappropriate, and that [Employee 3] witnessed it. She also stated, however, that she felt she could "handle" Mr. Sawyer's behavior. Indeed, [Employee 3] made similar comments to OEIG investigators – i.e. that he thought [Employee 4] could handle the comments herself, without assistance.

[Employee 3] told OEIG investigators about two different events – one in 2017, and another in 2018 – potentially related to [Employee 4's] recollection. He recalled that Mr. Sawyer, himself, and two other IDVA employees were talking in a hallway at some point in 2017, when they all saw [Employee 4] pause to pick something up.³ At that point, according to [Employee 3], Mr. Sawyer clearly pointed to [Employee 4's] posterior and said, "Speaking of lunch." [Employee 3] said he understood the remark to be an inappropriate sexual comment and that it upset him. He also told OEIG investigators about an incident in 2018 when [Employee 4] told him that Mr. Sawyer made a comment to her about her shoe straps. [Employee 3] indicated that he believed Mr. Sawyer's comment to be a sexual innuendo that upset [Employee 4].⁴

A review of Mr. Sawyer's email and calendar records provides evidence that is at least consistent with [Employee 4's] recollection. Specifically, OEIG investigators found an entry in

² This includes the witnesses that Mr. Dooley interviewed plus four individuals that Mr. Dooley was unable to interview – [Employee 7], Ms. Jeffries, [Employee 8], and [Employee 9]. In their respective interviews, they stated that they had no personal knowledge of Mr. Sawyer using inappropriate, sexually-oriented language in the four instances outlined in this report or on other occasions.

³ The employees [Employee 3] said were present were [Employee 9] and [Employee 8], both of whom told OEIG investigators that they had no recollection of this incident or any inappropriate, sexually-oriented comments made by Mr. Sawyer.

⁴ During her interview, [Employee 4] also told OEIG investigators that Mr. Sawyer made a comment about her shoe straps, and that she felt the comment was inappropriate. Unlike [Employee 3], however, she told OEIG investigators that the comment was made at approximately the same time as the "lunch" comments on March 14, 2018.

Mr. Sawyer's electronic calendar for an IVAC meeting on March 14, 2018 from 10:30AM to 12:00PM, indicating that he likely attended that event, and that it ended around lunch time. Mr. Sawyer also had a calendar entry indicating that he would be traveling to Springfield on March 13, 2018, for a meeting that day related to the Du Quoin State Fair, with an overnight stay for the IVAC meeting the following day.

2. The "Ring Girls" Reference

Two witnesses – [Employee 2] and [Employee 1], both of whom were based in Springfield – told OEIG investigators about an incident that occurred on March 28, 2018. [Employee 2] recalled that Mr. Sawyer was in Springfield at that time for a Vietnam Veterans event, and that she attended a meeting with him in [Employee 1's] office. Mr. Sawyer's email and travel records also indicated that Mr. Sawyer was in Springfield on that day, and that IDVA hosted an event the following day in honor of Vietnam veterans to coincide with the Federal National Vietnam War Veterans Day. Those records did not, however, reflect any specific meeting between [Employee 2], [Employee 1], and Mr. Sawyer.

According to [Employee 2], the purpose of the meeting was to discuss how to display donated paintings at the upcoming Du Quoin State Fair. [Employee 2] told OEIG investigators that Mr. Sawyer suggested that female IDVA employees (including her) display the pictures by holding them over their heads and walking around. She in turn asked Mr. Sawyer if he was referring to boxing ring girls and he nodded affirmatively. [Employee 2] recalled that she and [Employee 1] both replied, "really?" and she then walked out of the office.

In his OEIG interview, [Employee 1] similarly recalled an incident, although he could not remember when it occurred. As he recalled, he was meeting with [Employee 2] in his office to discuss the Du Quoin State Fair when Mr. Sawyer walked by while they were talking about displaying donated paintings. According to [Employee 1], Mr. Sawyer stopped by the door and stated that people should hold them up. This, in turn, led [Employee 2] to ask, in substance, "Do you mean like boxing ring girls?" [Employee 1] told OEIG investigators that he considered the comment a joke, and stated that he and Mr. Sawyer both laughed about it at the time. Both [Employee 2] and [Employee 1], however, also indicated that Mr. Sawyer demonstrated a "ring girl" pose while making his suggestion.

Two IDVA employees who were not present for the comment also told OEIG investigators that they heard about it after the fact. Specifically, [Employee 3] stated that he heard about the comment indirectly from [Employee 4], and Ms. Brown stated that she heard about it directly from [Employee 2]. Both Ms. Brown and [Employee 3] told OEIG investigators that [Employee 2] was probably subjectively offended by or at least uncomfortable with the comment.

3. The "Icing" Comment

The third incident also reportedly occurred on March 28, 2018. Two witnesses – [Employee 4] and [Employee 2] – told OEIG investigators that the Springfield office held birthday party celebrations, one of which occurred on that day. Both women recalled meeting in [Employee 4's] office at about the time of the birthday party, and that [Employee 4] had a piece of cake with

her, from which she had removed the icing. They also recalled Mr. Sawyer asking [Employee 4] if she was going to eat the icing, and that when she answered in the negative, he replied with something like, “I wanted to watch you lick the spoon.”

The witness testimony diverges, however, with respect to how the comment was taken. [Employee 2] told OEIG investigators that after Mr. Sawyer left, she discussed the comment with [Employee 4], and that they agreed it was inappropriate. [Employee 4], however, indicated that she was not offended by the comment. Instead, she said she told Mr. Sawyer that he was “nasty,” and claimed that they laughed about the comment together.

4. The “Lady Godiva” Comment

Five witnesses – including [Employee 10], [Employee 4], [Employee 2], [Employee 5], and [Employee 6] ⁵ – told OEIG investigators about another event that occurred on March 28, 2018.⁶ Their testimony agreed on certain basic facts, including that (1) the purpose of the meeting was to discuss the upcoming Illinois State Fair, (2) there were participants in Springfield, as well as remote participants from Chicago, (3) [Employee 10] stated that she would be willing to ride a horse in a parade planned for the Illinois State Fair, and (4) Mr. Sawyer made a responsive comment referencing Lady Godiva.⁷ A sixth witness – [Employee 1] – recalled participating in the meeting, but did not recall hearing any comment about Lady Godiva.

All five witnesses who remembered hearing Mr. Sawyer’s comment about Lady Godiva also recalled that he laughed loudly and for a long time afterwards. [Employee 6] – the only one who attended remotely – stated that she heard the room laughing, while the others only referred to Mr. Sawyer. [Employee 2], [Employee 4], and [Employee 5] all appeared to understand the reference to Lady Godiva in real time – that is, they understood that it referred to a naked female rider of a horse. During his interview with the OEIG, [Employee 5] stated that he thought the comment was a joke, and neither “malicious” nor an “obscene sexual reference.” [Employee 10] told OEIG investigators that while she did not understand the comment when it was made, she thought it was inappropriate when [Employee 2] later explained it to her. Similarly, [Employee 6] stated that she did not understand the comment until it was explained to her later, and that she was not offended by it, even though she understood that it was inappropriate.

C. Allegations Of Racial Discrimination

In addition to allegations of inappropriate, sexually-oriented comments, several witnesses told OEIG investigators that Mr. Sawyer used racial slurs or other inappropriate race-based language when referring to African-American IDVA employees. First, [Employee 5] described

⁵ At all times relevant to this investigation, [Employee 5] was based in Springfield, while [Employee 6] was based in Chicago.

⁶ [Employee 4] and [Employee 2] told OEIG investigators that the meeting occurred on March 28, 2018, while the other witnesses could only place the meeting generally into March 2018. OEIG investigators determined that the meeting likely occurred on March 28, 2018 from 2:00PM to 3:00PM, based on a calendar invite circulated by Mr. Sawyer and accepted by the witnesses who recalled the meeting.

⁷ According to Anglo-Saxon myth, Lady Godiva rode a horse naked in the streets of Coventry, England to convince her husband to reduce taxation on the local populace. See <https://www.britannica.com/biography/Lady-Godiva>.

an incident that he said occurred on August 26, 2017, during a visit to the Du Quoin State Fair.⁸ According to [Employee 5], Mr. Sawyer stated that he was upset with [Employee 7's] job performance, which he described as being inadequate. He further stated that, in the same conversation, Mr. Sawyer said, "[A]ll n-----s stick together," and that there was a "sisterhood" of African-American women within IDVA protecting each other. [Employee 5] told OEIG investigators that Mr. Sawyer also made a hand gesture in front of his own face, which he interpreted as racially inappropriate.⁹ Ms. Brown told OEIG investigators that she heard about these comments from both [Employee 5] and [Employee 4], but did not personally witness any acts of "overt racism."

Second, [Employee 5] and [Employee 4] both described an incident that occurred in late 2017 or early 2018. Both recalled that they were in [Employee 4's] office working on a travel reimbursement voucher for Mr. Sawyer, and that Mr. Sawyer was also present. According to both witnesses, Mr. Sawyer expressed his frustration with [Employee 7] not being able to complete the voucher in a correct and timely manner and referred to her as a "n-----r" in doing so. [Employee 7] – who was not at the meeting – told OEIG investigators that although Mr. Sawyer had occasional outbursts of verbal abuse, she never heard him use racially inappropriate language.¹⁰ Indeed, four other witnesses – including Ms. Jeffries, Ms. Brown, [Employee 8], and [Employee 9] – indicated that they had no personal knowledge of Mr. Sawyer using racially inappropriate language.

D. General Views Of Mr. Sawyer's Alleged Conduct

Several witnesses told OEIG investigators about their general views of Mr. Sawyer's alleged conduct, without tying those views to any specific incident. First, [Employee 2] said that she did not think that Mr. Sawyer's comments threatened her job in any way but she did think that this type of behavior was especially inappropriate for Mr. Sawyer since he was effectively in the chain of command at IDVA. She characterized him as a "creepy old man" who simply needed to be made aware of the inappropriate nature of some of his conduct. [Employee 2] also told OEIG investigators that she believed Mr. Sawyer's actions upset [Employee 4] and affected her work. [Employee 4], however, stated that she did not feel threatened by Mr. Sawyer's statements. Instead, she told OEIG investigators that she thought Mr. Sawyer did not realize that "he shouldn't say things [of a sexual nature]" at work. Indeed, while she found such comments inappropriate, she stated that she felt she could "hold her own" with Mr. Sawyer.

At least two other witnesses, however, indicated that they did not feel comfortable confronting Mr. Sawyer about his comments. First, [Employee 3] told OEIG investigators that Mr. Sawyer had power and authority as the Assistant Director, and indicated that he felt that Mr.

⁸ OEIG investigators found a travel reimbursement voucher for Mr. Sawyer indicating that he was at the Du Quoin State Fair on August 26, 2017, as [Employee 5] claimed.

⁹ [Employee 5] told OEIG investigators that he shared Mr. Sawyer's comments with [Employee 4], who was offended by them. While [Employee 4] told the OEIG about a separate incident, she did not affirmatively mention this incident when she was generally asked if she was aware of Mr. Sawyer making any derogatory statements about [Employee 7].

¹⁰ [Employee 6] recalled another occasion (which she could not date) when she was discussing compensation matters with Mr. Sawyer and he said that he could fire her "for the way [her] hair looks." [Employee 6] told OEIG investigators that she was wearing her hair in its natural, curly state at the time, and that she thought it was inappropriate for a white man like Mr. Sawyer to comment on that.

Sawyer could hinder his career if he spoke up about Mr. Sawyer's conduct.¹¹ Second, [Employee 5] stated that while he respected Mr. Sawyer, he understood that some of his comments were inappropriate. Nevertheless, he stated that he never confronted Mr. Sawyer about them because "you should know your place and stay in your lane."

E. Ms. Jeffries' Response To Mr. Dooley's Investigation

Towards the end of this investigation, OEIG investigators spoke with Ms. Jeffries to determine what she knew about the allegations against Mr. Sawyer, and what steps IDVA took in response to Mr. Dooley's report. As a general matter, she strongly denied any personal knowledge of Mr. Sawyer using inappropriate sexually- or racially-oriented language at any time. She further indicated that she spent a lot of time with Mr. Sawyer, given his position as Assistant Director, and that she never saw any evidence that he was a sexual harasser or a racist. She did, however, acknowledge that Mr. Sawyer was "old school" and could be perceived as a "creepy old man."

Ms. Jeffries acknowledged that the personal statements she heard from [Employee 4] and [Employee 2] were credible, and that the concerns about them expressed by Ms. Brown and Mr. Dooley were at least potentially valid. She said that she directed Mr. Dooley to begin a formal investigation. Ms. Jeffries said that after Mr. Dooley submitted his report, she spoke with the Governor's Office about the matter and told them she believed that Mr. Sawyer should be allowed to resign since he served honorably in the Vietnam War, and had 37 years of State service. She also reiterated that she could not say whether the allegations were true, even though she found the witness statements credible. Ms. Jeffries explained that the Governor's Office told her that Mr. Sawyer would be terminated if he did not resign. Ms. Jeffries said that shortly thereafter, she spoke with Mr. Sawyer, and told him generally that allegations were made against him related to the use of inappropriate sexually- and racially-oriented language. Ms. Jeffries said that Mr. Sawyer immediately said the allegations were "B.S." and about a week later again denied the racial allegations. Ms. Jeffries told OEIG investigators that she felt he did not deserve this treatment and the allegations were overblown. Nevertheless, she also told him that the Governor's Office had decided that he could either resign or be terminated. Ms. Jeffries confirmed that Mr. Sawyer later submitted a resignation letter that she helped him write.

OEIG investigators contacted Mr. Sawyer after he left State employment, but he declined to give a voluntary interview.

IV. ANALYSIS

A. Mr. Sawyer Violated IDVA Handbook's Prohibition Against Sexual Harassment

The IDVA Employee Handbook (IDVA Handbook) states that "[e]ach employee has the responsibility to refrain from sexual harassment in the workplace," and that "the harassing employee will be subject to disciplinary action up to and including discharge." Under the IDVA

¹¹ [Employee 3] also told OEIG investigators that [Employee 4] referred to Mr. Sawyer as a "creepy old man" who did not always realize that his conduct was inappropriate.

Handbook, sexual harassment includes, but is not limited to, “sexual remarks about a person’s . . . body” and “innuendos or remarks with a double (sexual) meaning.”¹²

Each of Mr. Sawyer’s comments and actions discussed above qualifies either as a remark “about a person’s body” or as a remark or innuendo “with a double (sexual) meaning,” and therefore amounts to an incident of sexual harassment under the IDVA Handbook. That is, although each comment is theoretically susceptible to an innocent interpretation, there is a strong basis from which to conclude that they were intended sexually. First, with respect to the “lunch” comment, the witness testimony indicates that Mr. Sawyer was referring to [Employee 4’s] posterior in a sexual manner, and that the comment was understood as such by those who remembered hearing it. Second, the witness testimony about Mr. Sawyer’s implicit reference to “ring girls” suggests that those who heard the comment understood it to be a reference to the scantily-clad women employed to hold cards over their heads announcing the next round in a boxing match. Third, while the “icing” comment was not overtly sexual in nature and did not directly comment on anyone’s body or sexual activities, those who heard it understood it as sexual innuendo, even if they were not uniformly offended by it. Fourth, the witnesses to the “Lady Godiva” comment understood that it referred to a naked female rider of a horse. Therefore, by drawing a comparison between [Employee 10] and Lady Godiva, Mr. Sawyer’s comment had an obvious double sexual meaning. The inappropriate nature of the comment is further supported by the fact that the witnesses who heard it indicated that they thought the comment was at least inappropriate, while some also found it personally offensive. For these reasons, similar to IDVA, the OEIG concludes that the allegation that Mr. Sawyer violated the IDVA Handbook’s prohibition against sexual harassment is **FOUNDED**.¹³

The Ethics Act states that “[a]ll persons subject to this Act are prohibited from sexually harassing any person, regardless of any employment relationship or lack thereof.”¹⁴ It goes on to define sexual harassment in the same terms as the Illinois Human Rights Act (IHRA): “any conduct of a sexual nature . . . when such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment.”¹⁵

Although courts have not yet interpreted the Ethics Act’s sexual harassment prohibition, courts interpreting the IHRA’s prohibition have looked to Federal caselaw interpreting Title VII of the Federal Civil Rights Act for guidance for nearly 30 years.¹⁶ Under that caselaw, hostile work environment sexual harassment exists if conduct is “sufficiently severe or pervasive to alter the conditions of the victim’s employment,” both objectively from the point of view of the reasonable person, and subjectively from the point of view of the victim.¹⁷ Determining whether a given act or course of conduct meets this standard requires an all-the-circumstances analysis,

¹² IDVA Handbook at 27.

¹³ The OEIG concludes that an allegation is “founded” when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance.

¹⁴ 5 ILCS 430/5-65(a).

¹⁵ 5 ILCS 430/5-65(b) (Ethics Act); 775 ILCS 5/2-101(E) (IHRA). While the Ethics Act and the IHRA also prohibit quid-pro-quo sexual harassment, no such allegations were made in the instant complaint.

¹⁶ See *Zaderaka v. Ill. Human Rights Comm’n*, 545 N.E.2d 684, 687 (Ill. 1989).

¹⁷ *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993).

including review of “the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.”¹⁸ It is also clear, however, that “not every unpleasant workplace is a hostile environment. The occasional vulgar banter, tinged with sexual innuendo, of coarse or boorish workers would be neither pervasive nor offensive enough to be actionable.”¹⁹ Put another way, “simple teasing, offhand comments, and isolated incidents (unless extremely serious)” do not constitute sexual harassment under the caselaw.²⁰

Based on the information uncovered in this investigation, the OEIG found insufficient evidence to conclude that Mr. Sawyer’s actions violated the Ethics Act’s sexual harassment prohibition, because the comments and innuendo do not appear to have been either pervasive enough or severe enough to alter conditions of employment i.e. to create a hostile work environment. While Mr. Sawyer’s comments were sexual in nature, and entirely inappropriate for the workplace, they did not appear to have been threatening or particularly severe, nor did they appear to interfere with anyone’s ability to do his or her job. Indeed, several witnesses told OEIG investigators that while they were offended by Mr. Sawyer’s comments, they thought that they could “handle” the matter. Other individuals, including some who appeared to be the direct recipients of the comments, indicated they were not offended by them, although they agreed the comments were inappropriate. Nobody indicated that they felt their own job performance or work conditions were affected by his comments. Overall, multiple witnesses indicated that they merely viewed Mr. Sawyer as an essentially benign “creepy old man” who used inappropriate language in the workplace. Furthermore, none of the witnesses interviewed by the OEIG had any additional examples of Mr. Sawyer making similar inappropriate comments, outside of the four comments that had already been reviewed during IDVA’s internal investigation of the matter.

In sum, the OEIG concludes, based on the available witness statements, that Mr. Sawyer’s comments amounted to “occasional vulgar banter, tinged with sexual innuendo,” and that there is not enough evidence to conclude that his conduct was sufficiently severe or pervasive to give rise to a hostile work environment. Therefore, the allegation that Mr. Sawyer engaged in sexual harassment in violation of the Ethics Act is **UNFOUNDED**.

B. Mr. Sawyer Violated The State Of Illinois Code Of Personal Conduct By Using Highly Offensive, Race-Based Language

While the IDVA Handbook’s equal employment opportunity / affirmative action policy (EEO/AA policy) commits the agency to a workplace free from discrimination and harassment based on a variety of protected characteristics, including sex and race,²¹ it does not contain a separate racial harassment policy similar to its sexual harassment policy, which provides specific examples of relevant misconduct that appear to be less stringent. As such, the EEO/AA policy alone guides any analysis of any claim that an IDVA employee engaged in racial harassment.

¹⁸ *Id.* at 23.

¹⁹ *Perry v. Harris Chernin, Inc.*, 126 F.3d 1010, 1013 (7th Cir. 1997).

²⁰ *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998).

²¹ IDVA Handbook at 25-26.

Although courts have not been called upon to interpret the relevant legal standards applicable to claims of racial harassment under the IDVA Handbook, certain aspects of the policy therein may serve as guideposts. Specifically, the IDVA Handbook permits (but does not require) employees to file “external charge[s]” with the United States Equal Employment Opportunity Commission (US EEOC) within 300 days of the alleged incident of harassment. When claims of race-based harassment are filed with the US EEOC, they are assessed under Title VII of the Federal Civil Rights Act in a manner largely analogous to claims of sexual harassment. In other words, the relevant inquiry is whether the race-based harassment was so “severe and pervasive as to alter the conditions of the employee’s work environment by creating a hostile or abusive situation. . . .”²² The caselaw is clear, however, that an isolated use of a racial slur – even one as patently offensive as “n---r” – is not sufficient to meet this standard.²³ This is especially true when the person who hears the offensive statement is not its intended target.²⁴

Based on these standards and the facts uncovered during this investigation, there is insufficient evidence of racial harassment in violation of the IDVA Handbook. Mr. Sawyer’s conduct, however, violated the State of Illinois Code of Personal Conduct requiring employees to conduct themselves “with integrity and in a manner that reflects favorably upon the State” and “in accordance with the [Ethics Act].”²⁵ Two witnesses told OEIG investigators that they heard Mr. Sawyer use an entirely inappropriate and unacceptable term – specifically, the word “n---r” – to refer to African-American employees on at least one occasion. [Employee 5] remembered him using the term more than once. The incidents that [Employee 5] remembered were separated by a long stretch of time – perhaps as long as six months. While [Employee 6] told OEIG investigators that Mr. Sawyer made a race-based comment on her hair, she could not recall when the comment was made. Neither witness indicated that any of these isolated instances affected their ability to do their jobs, and both said that use of such language by Mr. Sawyer was highly unusual. Lastly, all the other witnesses who were expressly asked about Mr. Sawyer’s alleged use of racially inappropriate language denied any personal knowledge thereof. In sum, there is sufficient evidence that Mr. Sawyer used extremely offensive racial language to refer to multiple IDVA employees, but in these particular circumstances this conduct did not rise to the level of creating an objectively hostile work environment. Mr. Sawyer’s use of such language was not in keeping with the Code of Personal Conduct, and certainly would reflect poorly upon the agency especially given Mr. Sawyer’s high rank and position of leadership. For these reasons, the allegation that Mr. Sawyer engaged in conduct unbecoming a State employee by using highly offensive, race-based language is **FOUNDED**.²⁶

V. FINDINGS AND RECOMMENDATION

As a result of its investigation, the OEIG finds that **THERE IS REASONABLE CAUSE TO ISSUE THE FOLLOWING FINDINGS:**

²² *Cole v. Board of Trustees of Northern Illinois University*, 838 F.3d 888, 895-96 (7th Cir. 2016).

²³ *Nichols v. Michigan City Plant Planning Dep’t*, 755 F.3d 594, 600-01 (7th Cir. 2014).

²⁴ *Smith v. Northeastern Illinois University*, 388 F.3d 559, 566-67 (7th Cir. 2004).

²⁵ Code of Personal Conduct at 4.

²⁶ For similar reasons, Mr. Sawyer’s sexually-oriented comments also reflect extremely poorly upon him and IDVA, and therefore also constituted conduct unbecoming a State employee in violation of the State of Illinois Code of Personal Conduct.

- **FOUNDED** – Mr. Sawyer’s sexually-oriented comments violated the IDVA Handbook’s prohibition against sexual harassment.
- **UNFOUNDED** – Mr. Sawyer’s sexually-oriented comments did not violate the Ethics Act’s prohibition against sexual harassment.
- **FOUNDED** – Mr. Sawyer’s use of inappropriate and highly offensive race-based language constituted conduct unbecoming a State employee and therefore violated the State of Illinois Code of Personal Conduct.

Because Mr. Sawyer left State employment during the pendency of this investigation, the OEIG recommends that IDVA place a copy of this report in Mr. Sawyer’s employment file. Additionally, the OEIG recommends that IDVA consider revising its handbook to incorporate provisions to its policy against racial discrimination and harassment similar to its current policy against sexual harassment. Doing so would strengthen IDVA’s ability to respond to the use of inappropriate and offensive race-based language/conduct that, while perhaps not actionable under Title VII and/or related Illinois laws, should not go unaddressed.

No further investigative action is needed, and this case is considered closed.

Date: **February 28, 2019**

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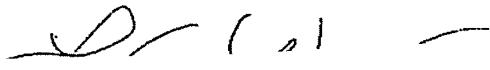
Please check the box that applies. (Please attach additional materials, as necessary.)

☐ We have implemented all of the OEIG recommendations. Please provide details as to actions taken:

☐ We will implement some or all of the OEIG recommendations but will require additional time to do so.

We will report to OEIG within 60 days from the original return date.

☐ We do not wish to implement some or all of the OEIG recommendations. Please provide details as to what actions were taken, if any, in response to OEIG recommendations:



Signature

IDVA, Director

Print Agency and Job Title

 Linda, Chapa LaVia

Print Name

3/22/2019

Date